

SUBPART 204-6

NO_x ALLOWANCE TRACKING SYSTEM

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Historical Note

Subpart (§§ 204-6.1 — 204-6.8) filed Jan. 26, 2000 eff. 30 days after filing.

§ 204-6.1 NO_x allowance tracking system accounts.

(a) *Nature and function of compliance accounts and overdraft accounts.* Consistent with section 204-6.2(a) of this Subpart, the administrator will establish one compliance account for each NO_x budget unit and one overdraft account for each source with two or more NO_x budget units. Allocations of NO_x allowances pursuant to Subpart 204-5 or section 204-9.9 of this Part and deductions or transfers of NO_x allowances pursuant to sections 204-4.2, 204-6.5, 204-6.7, Subpart 204-7, or 204-9 of this Part will be recorded in the compliance accounts or overdraft accounts in accordance with this Subpart.

(b) *Nature and function of general accounts.* Consistent with section 204-6.2(b) of this Subpart, the administrator will establish, upon request, a general account for any person. Transfers of NO_x allowances pursuant to Subpart 204-7 of this Part will be recorded in the general account in accordance with this Subpart.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing

§ 204-6.2 Establishment of accounts.

(a) *Compliance accounts and overdraft accounts.* Upon receipt of a complete account certificate of representation under section 204-2.4 of this Part, the administrator will establish:

- (1) a compliance account for each NO_x budget unit for which the account certificate of representation was submitted; and
- (2) an overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO_x budget units.

(b) *General accounts.* (1) Any person may apply to open a general account for the purpose of holding and transferring NO_x allowances. A complete application for a general account shall be submitted to the administrator and shall include the following elements in a format prescribed by the administrator:

(i) name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative;

(ii) at the option of the NO_x authorized account representative, organization name and type of organization;

(iii) a list of all persons subject to a binding agreement for the NO_x authorized account representative or any alternate NO_x authorized account representative to represent their ownership interest with respect to the NO_x allowances held in the general account;

(iv) the following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or the NO_x alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to NO_x allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the administrator or a court regarding the general account";

(v) the signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed; and

(vi) unless otherwise required by the department or the administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the department or the administrator. Neither the department nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Upon receipt by the administrator of a complete application for a general account under paragraph (1) of this subdivision:

(i) the administrator will establish a general account for the person or persons for whom the application is submitted;

(ii) the NO_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the administrator or a court regarding the general account;

(iii) each submission concerning the general account shall be submitted, signed, and certified by the NO_x authorized account representative or any alternate NO_x authorized account representative for the persons having an ownership interest with respect to NO_x allowances held in the general account. Each such submission shall include the following certification statement by the NO_x authorized account representative or any alternate NO_x authorized account representative any: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment"; and

(iv) the administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subparagraph (iii) of this paragraph.

(3) (i) An application for a general account may designate one and only one NO_x authorized account representative and one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(ii) Upon receipt by the administrator of a complete application for a general account under paragraph (1) of this subdivision, any representation, action, inaction, or submission

by any alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(4) (i) The NO_x authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under paragraph (1) of this subdivision. Notwithstanding any such change, all representation, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and the persons with an ownership interest with respect to the NO_x allowances in the general account.

(ii) The alternate NO_x authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under paragraph (1) of this subdivision. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new alternate NO_x authorized account representative and the persons with an ownership interest with respect to the NO_x allowances in the general account.

(iii) (a) In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the administrator, as if the new person were included in such list.

(b) Within 30 days following any change in the persons having an ownership interest with respect to NO_x allowances in the general account, including the addition of persons, the NO_x authorized account representative or any alternate NO_x authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x allowances in the general account to include the change.

(5) (i) Once a complete application for a general account under paragraph (1) of this subdivision has been submitted and received, the administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (1) of this subdivision is received by the administrator.

(ii) Except as provided in paragraph (4) of this subdivision, no objection or other communication submitted to the administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative or the finality of any decision or order by the administrator under the NO_x Budget Trading Program.

(iii) The administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.

(c) *Account identification.* The administrator will assign a unique identifying number to each account established under subdivision (a) or (b) of this section.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing

§ 204-6.3 NO_x allowance tracking system responsibilities of NO_x authorized account representative.

(a) Following the establishment of a NO_x allowance tracking system account, all submissions to the administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_x allowances in the account, shall be made only by the NO_x authorized account representative for the account.

(b) *Authorized account representative identification.* The administrator will assign a unique identifying number to each NO_x authorized account representative.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing.

§ 204-6.4 Recordation of NO_x allowance allocations.

(a) The administrator will record the NO_x allowances for 2003 in the NO_x budget units' compliance accounts and the allocation set-asides, as allocated under Subpart 204-5 of this Part. The administrator will also record the NO_x allowances allocated under section 204-9.9(a)(1) of this Part for each NO_x budget opt-in unit in its compliance account.

(b) Each year, after the administrator has made all deductions from a NO_x budget unit's compliance account and the overdraft account pursuant to section 204-6.5 of this Subpart, the administrator will record NO_x allowances, as allocated to the unit under Subpart 204-5 or under section 204-9.9(a)(2) of this Part, in the compliance account for the year after the last year for which NO_x allowances were previously allocated to the compliance account. Each year, the administrator will also record NO_x allowances, as allocated under Subpart 204-5 of this Part, in the allocation set-aside for the year after the last year for which NO_x allowances were previously allocated to an allocation set-aside.

(c) *Serial numbers for allocated NO_x allowances.* When allocating NO_x allowances to and recording them in an account, the administrator will assign each NO_x allowance a unique identification number that will include digits identifying the year for which the NO_x allowance is allocated.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing.

§ 204-6.5 Compliance.

(a) *NO_x allowance transfer deadline.* The NO_x allowances are available to be deducted for compliance with a unit's NO_x budget emissions limitation for a control period in a given year only if the NO_x allowances:

- (1) were allocated for a control period in a prior year or the same year; and
- (2) are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_x allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under section 204-7.1 of this Part by the NO_x allowance transfer deadline for that control period.

(b) *Deductions for compliance.* (1) Following the recordation, in accordance with section 204-7.2 of this Part, of NO_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for a control period, the administrator will deduct NO_x allowances available under subdivision (a) of this section to cover the unit's NO_x emissions (as determined in accordance with Subpart 204-8 of this Part):

- (i) from the compliance account; and
- (ii) only if no more NO_x allowances available under subdivision (a) of this section remain in the compliance account, from the overdraft account. In deducting NO_x allowances for units at the source from the overdraft account, the administrator will begin with the unit having the compliance account with the lowest NO_x allowance tracking

system account number and end with the unit having the compliance account with the highest NO_x allowance tracking system account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

(2) The administrator will deduct NO_x allowances first under subparagraph (1)(i) of this subdivision and then under subparagraph (1)(ii) of this subdivision:

(i) until the number of NO_x allowances deducted for the control period equals the number of tons of NO_x emissions, determined in accordance with Subpart 204-8 of this Part, from the unit for the control period for which compliance is being determined; or

(ii) until no more NO_x allowances available under subdivision (a) of this section remain in the respective account.

(c) (1) Identification of NO_x allowances by serial number. The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under subdivision (b), (d), or (e) of this section. Such identification shall be made in the compliance certification report submitted in accordance with section 204-4.1 of this Part.

(2) First-in, first-out. The administrator will deduct NO_x allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under paragraph (1) of this subdivision, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(i) those NO_x allowances that were allocated for the control period to the unit under Subpart 204-5 or 204-9 of this Part;

(ii) those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to Subpart 204-7 of this Part, in order of their date of recordation;

(iii) those NO_x allowances that were allocated for a prior control period to the unit under Subpart 204-5 or 204-9 of this Part; and

(iv) those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to Subpart 204-7 of this Part, in order of their date of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under subdivision (b) of this section, the administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

(2) If the compliance account or overdraft account does not contain sufficient NO_x allowances, the administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(3) Any NO_x allowance deduction required under this subdivision shall not affect the liability of the owners and operators of the NO_x budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the act or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a NO_x budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

(ii) Each ton of excess emissions is a separate violation.

(e) *Deductions for units sharing a common stack.* In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with Subpart 204-8 of this Part:

(1) the NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_x emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with section 204-4.1 of this Part; and

(2) notwithstanding subparagraph (b)(2)(i) of this section, the administrator will deduct NO_x allowances for each such unit until the number of NO_x allowances deducted equals the unit's identified percentage (under paragraph [1] of this subdivision) of the number of tons of NO_x emissions, as determined in accordance with Subpart 204-8 of this Part, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit.

(f) The administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subdivision (b), (d), or (e) of this section.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing.

§ 204-6.6 Banking.

(a) NO_x allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:

(1) Any NO_x allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO_x allowance is deducted or transferred under section 204-4.2, 204-6.5, 204-6.7, Subpart 204-7, or Subpart 204-9 of this Part.

(2) The administrator will designate, as a banked NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account, or a general account after the administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to section 204-6.5 of this Subpart.

(b) Each year starting 2004, after the administrator has completed the designation of banked NO_x allowances under paragraph (a)(2) of this section and before May 1st of the year, the administrator will determine the extent to which banked NO_x allowances may be used for compliance in the control period for the current year, as follows:

(1) The administrator will determine the total number of banked NO_x allowances held in compliance accounts, overdraft accounts, or general accounts.

(2) If the total number of banked NO_x allowances determined, under paragraph (1) of this subdivision, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10 percent of the sum of the State trading program budgets for the control period for the states in which NO_x budget units are located, any banked NO_x allowance may be deducted for compliance in accordance with section 204-6.5 of this Subpart.

(3) If the total number of banked NO_x allowances determined, under paragraph (1) of this subdivision, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10 percent of the sum of the State trading program budgets for the control period for the states in which NO_x budget units are located, any banked NO_x allowance may be deducted for compliance in accordance with section 204-6.5 of this Subpart, except as follows:

(i) The administrator will determine the following ratio: 0.10 multiplied by the sum of the State trading program budgets for the control period for the states in which NO_x budget units are located and divided by the total number of banked NO_x allowances determined, under paragraph (1) of this subdivision, to be held in compliance accounts, overdraft accounts, or general accounts.

(ii) The administrator will multiply the ratio by the number of banked NO_x allowances in each compliance account or overdraft account. The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with section 204-6.5 of this Subpart. Any banked NO_x allowances in excess of the resulting

product may be deducted for compliance in accordance with section 204-6.5 of this Subpart, except that, if such NO_x allowances are used to make a deduction, two such NO_x allowances must be deducted for each deduction of one NO_x allowance required under section 204-6.5 of this Subpart.

Historical Note

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§ 204-6.7 Account error.

The administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NO_x allowance tracking system account. Within 10 business days of making such correction, the administrator will notify the NO_x authorized account representative for the account.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing.

§ 204-6.8 Closing of general accounts.

(a) The NO_x authorized account representative of a general account may instruct the administrator to close the account by submitting a statement requesting deletion of the account from the NO_x allowance tracking system and by correctly submitting for recordation under section 204-7.1 of this Part, a NO_x allowance transfer of all NO_x allowances in the account to one or more other NO_x allowance tracking system accounts.

(b) If a general account shows no activity for a period of a year or more and does not contain any NO_x allowances, the administrator may notify the NO_x authorized account representative for the account that the account will be closed and deleted from the NO_x allowance tracking system following 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the administrator receives a correctly submitted transfer of NO_x allowance into the account under section 204-7.1 of this Part or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the administrator good cause as to why the account should not be closed.

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